1-011153A119 04/29/82 ICS IPMHGHC WSH PDMT
04521 04-29
1227P EST 11135 EST

western union **Telegram**

4-012424S119 04/29/82
ICS IPMBNGZ CSP
3127937045 TDBN CHICAGO IL 829 04-29 1017A EST
PMS ALEXANDER L STEVAS, CLERK OF SUPREME COURT NPT DLV MGM, RUSH RUSH
DLR BY 12P, DLR
SUPREME COURT BLDG
CAPITOL HILL DC 20515

APR 30 PAGE 9

RECEIVED
APR 29 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 81-523
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981
CONTAINER CORP OF AMERICA, APPELLATE
V FRANCHISE TAX BOARD, APPELLEE
OBJECTIONS TO SECOND MOTION OF CONTAINER CORP OF AMERICA
NOW COMES THE STATE OF ILLINOIS, ET AL, BY TYRONE C. FAHNER, ATTORNEY GENERAL FOR THE STATE OF ILLINOIS, AND RESPECTFULLY OBJECTS TO THAT PART OF THE SECOND MOTION BY CONTAINER CORP OF AMERICA TO EXPEDITE NOTING OF PROBABLE JURISDICTION WHICH DECLARES THAT WHICH THE ISSUE OF WORLDWIDE UNITARY APPORTIONMENT
"...REQUIRES, IS FOR THE COURT TO DEFER DECISION IN CHICAGO BRIDGE & IRON CO (NO. 81-349) AND NOTE PROBABLE JURISDICTION IN CONTAINER CORP OF AMERICA, NO. 81-523. (SECOND AND MOTION AT P.4, EMPHASIS ADDED) IT IS RESPECTFULLY SUBMITTED THAT THE GROUNDS STATED BY CONTAINER IN ITS SECOND MOTION ARE INCORRECT AND THE RESULT IT SEEKS WOULD CAUSE ILLINOIS IRRETRIEVABLE LOSSES, AS FOLLOWS:

1. CONTAINER CORP OF AMERICA AGREES WITH THE UNITED STATES SOLICITOR GENERAL THAT "... THERE IS NO DOUBT THAT THERE IS A CASE OR CONTROVERSY..." IN THE CHICAGO BRIDGE & IRON APPEAL. S CONTAINER ERRONEOUSLY SUGGESTS THAT THE CONSTITUTIONAL ISSUES ARE NOT PRESENTED WITH "SUFFICIENT CLEARITY" IN CHICAGO BRIDGE AND IRON DUE TO ABSENCE OF "PROOF" OF DOUBLE TAXATION, BOTH CONTAINER AND CHICAGO BRIDGE & IRON INSISTS THAT SEPARATE ACCOUNTING (ARMS LENGTHS) IS THE "PROOF" NECESSARY TO CLAIM EXTRATERRITORIAL DOUBLE, TAXATION, (JURISDICTIONAL STATEMENT OF CONTAINER AT P. 10) SUCH "PROOF" HAS BEEN REPEATEDLY REJECTED BY THIS COURT, AND THERE IS NO DIFFERENCE BETWEEN THE CONTAINER AND CHICAGO BRIDGE & IRON APPEALS OF THIS FUNDAMENTAL ISSUE.

2. UNLIKE CHICAGO BRIDGE & IRON, CONTAINER DOES NOT LIMIT ITS ISSUE TO WHETHER WORLDWIDE UNITARY APPORTIONMENT IS PROHIBITED BY OUR CONSTITUTION. RATHER, CONTAINER SEEKS ALTERNATIVE RELIEF FROM WORLDWIDE UNITARY APPORTIONMENT, CLAIMING ITS RECORD ESTABLISHES "... AN ACCEPTABLE LEVEL OF DISTORTION SO AS TO VIOLATE NEW PROCESS." (JURISDICTIONAL STATEMENT AT P. 10, BRIEF IN OPPOSITION TO MOTION TO AFFIRM OR DISMISS, PP. 3-4). IF THIS COURT CONCURRED WITH THESE

RECEIVED

ARGUMENTS FOR RELIEF, THEN THE CONSTITUTIONAL ISSUES IN CHICAGO BRIDGE & IRON WOULD NEVER BE REACHED IN THE CONTAINER APPEAL.

3. CONTAINER ALSO CONCLUDES, IN ERROR, THAT THE IDENTICAL CONSTITUTIONAL ISSUES PRESENTED IN BOTH APPEALS SOUGHT TO BE DECIDED ON THE "WELL-DEVELOPED" RECORD IN CONTAINER. IN CONTAINER'S JURISDICTIONAL STATEMENT, IT ASSERTS THAT ITS FOREIGN SUBSIDIARIES"... ARE NOT A PART OF A FUNCTIONALLY INTEGRATED BUSINESS WITH THE PARENT..." (QUESTION PRESENTED AT P. 5). THIS ARGUMENT IS REPEATED AGAIN IN ITS STATEMENT OF FACTS AT PP. 4-8 OF ITS JURISDICTIONAL STATEMENT AND IN ITS ARGUMENT AT PP. 21-23) THUS, CONTAINER PRESENTS AN ISSUE AS TO WHETHER ITS FOREIGN SUBSIDIARIES ARE FUNCTIONALLY INTEGRATED WITH ITS UNITED STATES PARENT. THIS IS IN MARKED CONTRAST TO THE EVIDENCE THAT CATERPILLAR'S FOREIGN SUBSIDIARIES ARE SO FUNCTIONALLY INTEGRATED WITH ITS ILLINOIS PARENT AS TO MAKE SEPARATE GEOGRAPHICAL ACCOUNTING AND IMPOSSIBILITY.

4. UNDER ILLINOIS LAW, IT IS NOT POSSIBLE TO AVOID PAYMENT OF REFUNDS DUE TO CORPORATIONS ENTITLED TO REFUNDS BASED ON WORLDWIDE UNITARY APPORTIONMENT, ONLY THE PAYMENT TO CATERPILLAR TRACTOR CO, ET. AL., CAN BE DEFERRED UNTIL FINAL DECISION OF THIS COURT ON THE CONSTITUTIONAL ISSUES PRESENTED. ONCE THE ILLINOIS SUPREME COURT HELD THAT ALL ILLINOIS TAXPAYERS ACTING AS A SINGLE BUSINESS UNIT MUST BE ACCORDED THE SAME FAIR APPORTIONMENT, (NOT JUST CATERPILLAR AND CHICAGO BRIDGE & IRON) VALID REFUND CLAIMS OF OTHER ILLINOIS TAXPAYERS BECAME DUE. CONVERSELY, CORPORATIONS WHICH OWE ADDITIONAL ILLINOIS TAXES ARE CONTESTING THEIR LIABILITY ON THE SAME GROUNDS AS CHICAGO BRIDGE & IRON. THIS LAVES ILLINOIS IN THE POSITION OF HAVING TO PAY REFUNDS BUT UNABLE TO COLLECT T UNABLE TO COLFCTION DEFICIENCYS BASED ON WORLDWIDE UNITARY APPORTIONMENT UNTIL THIS COURT ACTS. AS NOTED IN ILLINOIS MEMORANDUM OF CO-APPELLEE TO THIS COURT, THERE WERE SOME 1,458 NEW CLAIMS FOR REFUND LAST YEAR TOTALLING $32,141,910. THUS THE SECOND MOTION OF CONTAINER "...TO DEFER DECISION IN CHICAGO BRIDGE & IRON..." WOULD RESULT IN IRRETRIEVEABLE LOSES TO ILLINOIS.

CONTAINER STATES THAT IT HAS "...A KEEN AWARENESS OF THE LIMITATIONS OF, AND HEAVY DEMANDS UPON, THE COURT'S DOCKET AND THE NEED TO AVOID FULL BRIEFING AND ARGUMENT IN DUPLICATIVE CASES." (SECOND MOTION AT P. 8) IN VIEW OF THE FACT THAT CONTAINER PRESENTS THE ISSUE OF WHETHER ITS FOREIGN SUBSIDIARIES ARE EVEN PART OF ITS UNITARY OPERATIONS, IT IS EVIDENT THAT A DECISION BY THIS COURT THAT SUCH FOREIGN SUBSIDIARIES ARE, AS A MATTER OF LAW, SEPARATE, NON UNITARY ENTERPRISES, WOULD LEAVE THE ISSUE OF CONSTITUTIONAL VALIDITY OF WORLDWIDE UNITARY APPORTIONMENT UNANSWERED.

IT WOULD BE INAPPROPRIATE FOR THE STATE OF ILLINOIS TO COMMENT UPON WHETHER NOTING OF PROBABLE JURISDICTION IN CONTAINER CORP OF AMERICA SHOULD BE EXPEDITED, HOWEVER, THE STATE OF ILLINOIS OPPOSES, IN THE STRONGEST MEASURE, CONTAINER'S SECOND EFFORT TO "...DEFER DECISION IN CHICAGO BRIDGE & IRON CO..." FOR EACH OF THE REASONS STATED ABOVE.

RESPECTFULLY SUBMITTED

western union **Telegram**

TYRONE C FAHNER ATTORNEY GENERAL STATE OF ILLINOIS

RECEIVED
APR 29 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOHN D WHITENACK
SPECIAL ASSISTANT ATTORNEY GENERAL
STATE OF ILLINOIS BLDG SUITE 600
160 N LASALLE ST
CHICAGO IL 60601
312-7397045
LLOYD E FOSTER LITIGATION COUNCIL STATE OF ILLINSOI DEPT OF REVENUE
OF COUNCIL (160 N LASALLE ST CHICAGO IL 60601)
160 N LASALLE ST
CHICAGO IL 60601

1128 EST

11136 EST

IPMPOMA MSM